



# Robert Noone, Esq. Adoptions

## 3 TIPS FOR EXPERT WITNESSES ABOUT CROSS EXAMINATION

1. Understand that “Success” on cross examination is denying opposing counsel ammunition. Don’t do anything dumb and give the lawyer stuff to beat you up with. (Note: Your web site and social media site can be used against you based on your posts. Example: “You posted on your web site a ‘Checklist for Proper Assessment’ and yet you didn’t follow your own checklist.”)
2. Tell the TRUTH and don’t be EVASIVE/DEFENSIVE. If you are defensive, it looks like you have a dog in the hunt. You will appear much more credible if you legitimately “give in” on some points as opposed to fighting on everything. (Note: “How much money have you made in this case... How much are you charging per hour...” This is why you want that court order appointing you. You emphasize things by being defensive. *I’m not being paid for my testimony, I am paid for the services I’ve provided.*)
3. You must **ACTIVELY LISTEN** to each question! If you don’t, bad things will happen on cross.

## ABOUT MY C.V.

You want your CV to be accurate and you want to make yourself look good. However, any exaggerations, any mistakes, any puffery, any stuff like that can be absolutely devastating on cross examination. It differs from a resume where you’re going in for a job interview knowing you may be probed, you may be probed somewhat hard by the person interviewing you and a little puffery may be expected, **BUT BUT BUT** in an expert witness situation any type of exaggeration, any type of inaccuracy, or any type of mistake and the lawyer will have a field day and the Judge won’t give you the credibility you deserve. C.V. mistakes are avoidable. Share yours with trusted professional friends, supervisors, etc. first before sending it out to someone to share in court.



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### TRAITS OF THE IMPECCABLE EXPERT WITNESS

1. Is Likeable
2. Expert who has experience in court, but not “paid gun” bogus expert
3. Great CV, credentials, not “puffed” experience
4. Makes the attorney really PREPARE before the cross-exam. (but then again the impeccable expert PREPARES)
5. Has a lot of practice “in the field” – not a mere theory person, experience in the area they testify about.
6. Has done the research, knows the relevant facts – from both sides... has looked at the documents, depositions, reports, and talked with all relevant parties.
7. Not the person being paid \$800 per hour. If you are the COURT appointed evaluator, you have a distinct advantage.

### WITNESS QUALIFICATIONS TO FOR M OPINION

Foundation for the Expert Opinion of the Witness can include the following:

1. Witness has acquired degrees from education institutions
2. W has had other specialized training in the field of expertise.
3. W has a LICENSE to practice in that field
4. W has practiced in that field a substantial amount of time.
5. W has taught in the field.
6. W has published in the field.
7. W belongs to professional organizations in the field.
8. W has previously testified as an expert on this subject.

### TESTIMONY ON FACTS THE EXPERT WITNESS PERSONALLY KNOWS

1. Where the W observed the fact
2. When the W observed the fact
3. Who was present
4. How the W observed the fact
5. A description of the fact observed.



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## EXPERT WITNESS TIPS

1. **Do not answer a question until you understand it, PAUSE-** If the question is unclear, **ask examining counsel to repeat it** or phrase it in clearer language. The court reporter can also be asked to read back the question.
2. **Think about each question before answering it,** Do not supply information not requested by the question, even though you may think it is relevant. If examining counsel does not ask you all you know, **do not volunteer information.**
3. If you do not know the answer to a question, simply say, "I don't know." Do not feel that just because a question is asked, you are expected to know the answer to it. **Do not guess or assume.**
4. If an objection is made by your counsel, **STOP STOP STOP speaking immediately** and listen to the basis for the objection as it may assist you in answering the question. Unless your counsel instructs you not to answer, you must assume that you are bound to answer a question if you know the answer.
5. Avoid asking questions in your answers for a clarification of a question.
6. Do not try to memorize your answers. Give a factual, straightforward response to the questions, **(BETH WILL EXPLAIN ABOUT WHEN TO TAKE YOUR FILE AND NOTES WITH YOU, and EXCEPTIONS TO "Not Memorizing."**
7. If a question of fact is asked, make it a practice to check it against any records you may have, even if you are sure of the answer, and then answer it briefly.
8. Exercise courtesy and good manners, (Bite your tongue, even when attorney is an A\$\$.)
9. Remember that opposing counsel will be evaluating you constantly, From the very moment you appear, you are under observation, You must, therefore, take great care in your appearance, manner and remarks at all times. This will show her/him that you would impress a jury.
10. Do not argue with opposing counsel. Never become angry or hostile. Remain calm and unemotional even if you feel that opposing counsel is deliberately trying to provoke you, which she may be. A person who gets emotionally upset loses the ability to think clearly and may give answers which will later be regretted,
11. You can be required to give a simple yes or no answer to a proper question, but you will always have an opportunity to explain your answer if it needs

**explanation, If opposing counsel cuts you off in the middle of an important explanation, you should state that you have not finished your answer.**

12. **Examining counsel will probably ask many leading questions. A leading question is really a statement of fact which contains the answer and only asks the witness to agree. Counsel is asking you to answer "yes" to his statement of the facts. He will try to "put words in your mouth." If any part of the leading question is incorrect, you should not answer "yes" but make it clear by your answer that you cannot entirely agree.**
13. **The expert should bring to the deposition all materials necessary to support his opinions, but nothing else. Review file contents with your counsel before the deposition.**
14. **You must fight against showing any exasperation, boredom or fatigue, even though the questioning may be very extensive. You will be protected against unwarranted harassment by your counsel. Let your counsel know, however, if you feel ill or overly tired during the course of the examination. He can arrange for a short break, or if necessary, the adjournment of the deposition until another day.**
15. **Be positive and assertive**
16. **Don't be surprised by materials/info. you haven't seen.**
18. **Maintain eye contact with examiner. (AND WHEN NOT TO)**

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